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CURRENT TOPICS

Rules of the Supreme Court Amended

THE R.S.C. (No. 3), 1958 (S.I. 1958 No. 2094) are in two parts. The smaller—and more immediate—is Pt. II, which comes into force on 1st January, 1959. This substitutes a new r. 6 of Ord. 36 (itself new on 1st October, 1958) relating to the giving of directions in regard to the lists in which actions are to be set down for trial and as to the fixing of dates for trial; and amends r. 7 of that Order (also new on 1st October last) in regard to the powers of the district registrars at Birmingham, Leeds, Liverpool and Manchester to deal with applications for postponement of the trial of actions for hearing at those towns. Part I does not become operative until 16th February, 1959, the day on which the Maintenance Orders Act, 1958, is to come into force (see p. 924, *ante*). It is the first of the necessary codes of court rules to give effect to that Act, and will presumably be followed by new County Court and Magistrates' Courts Rules to similar purpose. It introduces a new Order, Ord. 41D, prescribing the procedure for registering in the High Court a maintenance order made in a magistrates' court or for obtaining the registration of a High Court maintenance order in a magistrates' court, and on variation or discharge of such orders or the cancellation of their registration. The new Order also prescribes the procedure on application for an attachment of earnings order, which is to be made on summons supported by affidavit, the form and service of the order, and subsequent proceedings. An amendment to Ord. 59, r. 29, makes clear that appeals from justices' orders regarding enforcement of registered High Court orders made under ss. 19–27 of the Matrimonial Causes Act, 1950, will be to a Divisional Court of the Probate, Divorce and Admiralty Division.

Reprieve for Dangerous Dogs ?

SOME weeks ago, under the heading "Destruction of Dogs" (see p. 642, *ante*), we referred to the unfortunate case of a young lady who had been fined £90 for failing to comply with an order by the Bournemouth magistrates for the destruction of her Alsatian dog. It appeared that she could not carry out the court's instructions and was therefore incurring a fine of £1 a day because, pending an appeal, she had given the dog to an animal sanctuary and the owners of the sanctuary refused to return it to her. At that time we suggested that it might be possible to avoid such difficult and distressing situations by giving magistrates power to allow the owner of a dangerous dog to place it in an animal sanctuary or home where, at his own expense and to the

CONTENTS

reasonable satisfaction of the court, it would be kept out of harm's way for the remainder of its life. We were pleased to see that Sir JOCELYN LUCAS made a similar suggestion in the House of Commons (11th December) and we are glad that it now seems likely that the Government would give its blessing to a private member's Bill to provide that when a dog which is found to be " dangerous " within the Dogs Act, 1871, is put in the care of an approved animal sanctuary or dog's home where it can do no further harm to the public, it should be allowed to live instead of being destroyed.

Change of Publication Day

WITH the commencement of vol. 103 next week, a change is being made in our publication day, which has been on Saturdays since THE SOLICITORS' JOURNAL was founded 102 years ago. Henceforth THE SOLICITORS' JOURNAL will be dated and published on Fridays and posted in time to reach subscribers on that day. There is an increasing tendency for solicitors' offices to work a five-day week and, accordingly, unless the paper is posted to subscribers' home addresses, many readers do not have the opportunity to read their copies until Monday. With the alteration, those who have the inclination may add this journal to their weekend reading.

Problems into Points

FOR some eighteen months " Rent Act Problems " has been a popular feature in these columns, and during that period available space has not permitted publication of replies to readers' queries on matters outside the Rent Act field. The initial difficulties of the new situation created by the Rent Act, 1957, are now largely overcome and its working more widely understood, and the time has accordingly come to resume publication of a wider selection of queries and answers. From the beginning of 1959, therefore, " Rent Act Problems " will disappear as a separate feature and in its place a selection of " Points in Practice " covering the whole range of readers' queries (including the Rent Acts) will appear at frequent intervals.

WITHDRAWAL OF APPEARANCE

A SOMEWHAT surprising omission, which practitioners before the Judicial Committee of the Privy Council are well advised to note, is that neither the Judicial Committee Rules of 1925 nor those of 1957 contain any express provision for the withdrawal of an appearance entered in an appeal under r. 21. An appeal itself can, of course, be withdrawn under rr. 32 and 33, and while, no doubt, the power to withdraw an appearance has always been presumed to exist and has been acted upon, circumstances calling for its purported exercise do not arise frequently, and it is not surprising, therefore, that its absence from the rules has apparently hitherto escaped notice and has not been subject to consideration by the Board. The matter, however, was fully discussed in *Hasham* v. *Zenab* [1958] 1 W.L.R. 1214; *ante*, p. 857, a petition asking for an order of a somewhat unusual nature. After the solicitors to the petitioner, who sought to appeal from a judgment of the Court of Appeal for Eastern Africa, had entered an appearance in her appeal (which appearance they later purported to withdraw) the petitioner subsequently instructed new solicitors who, however, did not take the steps prescribed by r. 86, and in particular did not amend the appearance. Thereafter her appeal was purported to be dismissed under r. 34 for want of prosecution, and a petition to restore it was dismissed by the Board.

On the present petition, by which the petitioner asked for an order to the effect that her appeal was still pending, the question as to the absence from the rules of a power to withdraw an appearance, which had not been raised before the Board who refused to restore the appeal, was fully argued. The point, said counsel for the petitioner, was a short and simple one of construction, and he submitted that a perusal of all the relevant rules which could possibly affect the matter disclosed " no sort or kind of rule for withdrawing an appearance." The result was, he said, that, in spite of what the first solicitors sought to do, they had no power to withdraw the appearance of the petitioner, who was entitled to say that her appeal could not be dismissed under r. 34.

For the respondent three submissions were made. Firstly, that on the true construction of the rules there was nothing to prevent a withdrawal of an appearance by an agent; admittedly, there was no express provision enabling an appearance to be withdrawn, but there was by necessary implication a power to withdraw, though there appeared to be no authority on it. Where there was authority to serve any form of process it must be implied that there was authority to withdraw it—" the common sense of the matter was that a solicitor or agent had always the power to undo what he had done." Secondly, this matter was *res judicata* on the grounds either that the point—construction of the rules—was taken during the hearing of the petition to restore, or it was open to the petitioner to have taken it then and, not having done so, she could not now take it. Thirdly, that the petitioner in this matter was in a similar position to, and certainly in no better one than, that of a petitioner who asked the Board for a rehearing, and in such a case he had to ask for the exercise of the Board's discretion, which was exercised very rarely and only in the most exceptional circumstances.

In the result the Board (Lord Tucker, Lord Cohen and Mr. L. M. D. de Silva), after they had consulted, allowed the petition and made an order declaring that notwithstanding the order dismissing the petitioner's application for leave to restore, and notwithstanding all or any other matters or steps that might have occurred or been taken, the appearance entered by the original solicitors still stood as an effective appearance, and that the petitioner's appeal was still pending. Their lordships also ordered that the period prescribed by r. 22 should be extended until ten days from the date of Her Majesty's order herein, and that there should be no order as to the costs of the present petition.

While, presumably, circumstances similar to those which gave rise to this unusual petition are seldom likely to recur, some inconvenience or misunderstanding may result from the existing position, and it would appear to be a necessary step for the rule-making authority to rectify at the earliest possible moment what must obviously have been an oversight and to regularise what seems in any event to have been an accepted practice.

C. C.

SOME 1958 STATUTES AND THE CONVEYANCER

THE end of the calendar year is a good time to review the outpouring of new statutes from the Parliamentary machine, and 1958 has certainly been prolific. Royal Assent was given on 7th July to fourteen statutes, on 23rd July to fifteen statutes, and on 1st August to yet seventeen more. A few of these relate to Scotland only, many more are of no special significance to conveyancers, but they will find that several of these Acts will be of particular interest. It is therefore the intention of these notes to draw attention to some of the salient features of this new legislation; the Land Powers (Defence) Act, 1958, has already been considered in the JOURNAL (p. 610, *ante*), and so is not again dealt with.

Litter Act, 1958

Under this Act it is not only an offence to deposit litter in a public place but also the statute prohibits the throwing, dropping or depositing of litter *from* a public place to *any* place in the open air; it is therefore an offence for a passer-by on the highway to throw an empty cigarette packet or banana skin over the garden fence of private premises, if such would in the circumstances cause or lead to "defacement" (whatever that may mean) of such place.

Drainage Rates Act, 1958

This short Act amends the definition of "annual value," on which drainage rates are assessed, by making the assessment depend in future on the annual value for Schedule A income tax purposes for the last year of assessment before the end of the period for which the rate is made, instead of the current annual value. No one can disagree with the effect of this amendment of the law, but one wonders whether the expenditure of allegedly valuable Parliamentary time thereon was really justified.

The Costs of Leases Act, 1958

This Act deals with a minor matter on which we are not accustomed to expect legislation, namely the incidence of costs as between the parties to a conveyancing transaction. Since 23rd July, each party must bear his own costs on the grant of a lease, underlease or tenancy agreement, subject to any written agreement between them to the contrary.

The Water Act, 1958

This is a somewhat more complicated measure, although it has but one main object, namely the conferment of powers on water undertakers to meet deficiencies in the supply of water due to exceptional shortage of rain—a somewhat ironical measure to be introduced at the end of the "summer" of 1958! On the application of the water undertakers, the Minister of Housing and Local Government may make an order authorising them to take water from any specified source, and to restrict the taking of water from a specified source, or the discharge of compensation water or the filtration or other treatment (e.g., chlorination) of water, and the Minister may include in the order a power to enter on privately owned land at seven days' notice. Such an order must be made in accordance with the detailed procedure set out in Sched. I to the Act, which procedure closely resembles the procedure normally applicable to the making of compulsory purchase orders (and the Minister has expressed the wish that the general views of the Franks Committee as to the conduct of public inquiries held in connection with such matters shall be observed in relation to this procedure (see Ministry of Housing and Local Government Circular 54/58, App. II, para. 5). Schedule II (see s. 1 (7)) provides for compensation to be paid for the taking of water or the occupation of land, to be assessed in case of dispute by the Lands Tribunal.

Opencast Coal Act, 1958

This is by far the most substantial of the statutes having a conveyancing interest, its main object being to "make provision with respect to the working of coal by opencast operations," although the local authority associations have recently made representations to H.M. Government to the effect that the obtaining of coal by this means should cease completely, on amenity grounds.

All coal and seams of coal, whether apparent or not, belong to the National Coal Board (Coal Industry Nationalisation Act, 1946), and therefore the procedure adopted by this Act is to enable the Board to obtain an "authorisation" to work coal by opencast operations, from the Minister of Power. The procedure for granting an authorisation is set out in Sched. I, and every owner, lessee and occupier of land affected, and the local planning authority and other local authorities, may object to the Minister and appear at the public inquiry; if a landowner proposes to object to such an authorisation he may therefore be well advised to endeavour to seek the support of the local authority to his objection. The Act also enables the National Coal Board to obtain a "compulsory rights order" in one of two forms, being either an "opencast site order" or a "storage site order"; again there is a detailed procedure that must be observed, and in some cases an application for an authorisation and a proposed compulsory rights order may be considered by the Minister at the same time. A compulsory rights order, if confirmed, will give the Board certain rights less than ownership over the land specified—for example, an opencast site order confers on the Board the "like rights to occupy the land comprised in the order, and to exclude other persons therefrom, as if the Board had acquired a freehold interest in the entirety of that land with vacant possession and free from incumbrances of any description" (s. 5 (4)). It is interesting to speculate on the effect of such a provision—does the addition of the words "any description" widen the normal conveyancing meaning of "incumbrance" to include easements* (the suspension of public rights of way is dealt with in s. 15) and possibly even liability to pay land tax? As a matter of jurisprudence, it is interesting to note the new type of rights over land that may be created under this statute (in this respect similar to the rights that may be created under the Water Act, 1958, *supra*) —something less than ownership but much more than mere occupancy.

The existence of a compulsory rights order affecting a particular parcel of land will be made known to a prospective purchaser, as the National Coal Board must notify the "making" (not the confirmation) of the order to the appropriate registrar of local land charges and it must be registered by him in the local land charges register (see s. 11).

* In any event the order will be wide enough to override the rights of a dominant owner (see ss. 5 (5) and 6 (3)).

This will be entered in the register maintained by the county borough or county district council concerned, and presumably it will be entered in Pt. IV of the register, although this is to be prescribed by rules not yet made.

Part II of the Act provides for the payment and assessment of compensation in respect of the making of compulsory rights orders; this will be payable by the Board and will be annual and terminal, and may also cover such matters as cost of removal, diminution in value, improvements (in the case of agricultural land), easements, injurious affection of other land, etc. In any case of dispute the amount of compensation payable is to be determined by the Lands Tribunal (s. 40 (3)).

The Agriculture Act, 1958

This Act repeals the powers contained in Pt. II of the Agriculture Act, 1947, for the Minister of Agriculture, Fisheries and Food (or the county agricultural executive committee acting on his behalf) to make supervision orders or to give directions and dispossess owners and occupiers of agricultural land on the ground of efficiency (see s. 1). The landlord of an agricultural holding in certain cases must provide his tenant with certain fixed equipment, in return for an increased rent (s. 4), and in future the Lord Chancellor, not the Minister, is to make provision for the procedure of agricultural land tribunals, as was recommended by the Franks Committee (see s. 5).

J. F. GARNER.

SETTLOR'S STRINGS ON DISCRETIONARY SETTLEMENTS—II

PROPERTY SETTLEMENTS

DISCRETIONARY settlements of property involve wider considerations than those applicable to deeds of covenant previously considered at p. 925, *ante*. Although similar income tax points arise, property settlements involve administration and disposition of capital resources. This necessitates consideration of the effect of estate duty.

Appointment of trustees

Acts of trustees must be done for the benefit of the trust and its objects. Trustees may have to account for any benefits they have received as a result of their actions. Generally, if a loss results from trustees investing in investments unauthorised by the settlement it must be made good by the trustees personally; any profit arising from such investment activities belongs to the trust fund.

As the position of a trustee is a fiduciary one, it follows that in theory the settlor can be a trustee (*Commissioner for Stamp Duties of New South Wales* v. *Perpetual Trustee Co., Ltd.* [1943] A.C. 425 (P.C.); *Oakes* v. *Commissioner of Stamp Duties of New South Wales* [1954] A.C. 57 (P.C.)). However, as a rule, the appointment of the settlor as a trustee is not to be recommended for fear that this will result in a decision that some benefit under the settlement has been reserved or retained for him. Such a benefit so reserved within five years of the settlor's death would admit a claim for estate duty (Finance Act, 1894, s. 2 (1) (*c*)). If the settlor were a trustee difficulties with regard to estate duty claims might be encountered by the existence of certain customary clauses, such as those dealing with powers of maintenance, powers to borrow and—in the event of the settlor or his partners being professionally concerned with the settlement—charging clauses (on which cf. *Oakes* v. *Commissioner of Stamp Duties of New South Wales* [1954] A.C. 57 (P.C.)). The recent Privy Council case of *Chick* v. *Commissioner of Stamp Duties* [1958] 3 W.L.R. 93; p. 488, *ante*, will do nothing to dispel doubts about the wisdom of the settlor's being a trustee. In that case, decided under the New South Wales Stamp Duties Acts, 1920 to 1956, death duties were held to be payable upon property given some eighteen years before the death of the deceased by him to his son. Although the gift was made to the entire exclusion of the deceased father it was held that the son had not thereafter retained the property to the father's entire exclusion. This was because under a partnership agreement between the father and his sons every partner brought into the partnership livestock and plant and their properties were used for the depasturing of the partnership stock. So long as the partnership subsisted—and it did so until the father's death—every one of the partners was in possession and enjoyment of the property.

Clearly the settlor should not be a trustee of any settlement under which appointments of capital may be made to a relative of the settlor. Any such appointment made within five years of the settlor's death might be caught under the rule (subject to certain specified exceptions) that any disposition made by the deceased in favour of a relative* of his must be treated as a gift for purposes of the Finance Act, 1894, s. 2 (1) (*c*) (Finance Act, 1940, s. 44 (1), as amended by Finance Act, 1950, s. 46). Again, if the administration of the settlement's trusts will involve dealing with shares of a company controlled by the settlor, his appointment as a trustee is inadvisable as such appointment might result in his being deemed to have control for estate duty purposes (cf. Act of 1940, s. 46, and s. 55 as amended by the Finance Act, 1954, ss. 29–31; and Act of 1940, s. 58; cf. also Potter and Monroe, Tax Planning, 2nd ed., p. 64).

There is one case where it is desirable for the settlor to be a trustee. Such a case is brought about by the combination of a statutory exemption and the existence of an accumulation clause in the settlement. The exemption provides that property passing on the death of the deceased is not to be deemed to include property held by the deceased as trustee for another person under a disposition made by the deceased more than five years before his death, where possession and enjoyment of the property were *bona fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise (Finance Act, 1894, s. 2 (3)).

A provision for accumulation of income until the death of the settlor or until the expiry of a defined period (within the limits imposed by the Law of Property Act, 1925, s. 164) thereafter, causes property to pass on the settlor's death under the Finance Act, 1894, s. 1 (cf. *Re Hodson's Settlement;*

* By the Finance Act, 1940, s. 44 (2), for the purposes of *ibid.*, s. 44, the expression " relative " means, in relation to the deceased, (*a*) the wife or husband of the deceased, (*b*) the father, mother, children, uncles and aunts of the deceased, and (*c*) any issue of any person falling within either of the preceding paragraphs and the other party to a marriage with any such person or issue; and references to " children " and " issue " include references to illegitimate children and to adopted children.

Brookes v. *A.-G.* [1939] Ch. 343, and *Westminster Bank, Ltd.* v. *A.-G.* [1939] Ch. 610), and this would override any other exemptions which might have been utilised upon the setting up of the trust, for example, a gift in consideration of marriage under the Finance (1909–10) Act, 1910, s. 59 (2). It is thought that where the settlor had no interest under the settlement the difficulty could be surmounted by his being a trustee at the time of his death and the calling in aid of the appropriate exemption. (In the case of *Re Hodson's Settlement*; *Brookes* v. *A.-G.* [1939] Ch. 343, the settlor was an original trustee. It is not clear from the report whether or not he remained a trustee until his death. In any case no reference is made in the report to s. 2 (3) of the Finance Act, 1894.)

It is common practice for the settlor to appoint the first trustees and often he is empowered to nominate successors. In view of a trustee's fiduciary position a charge of bad faith would have to be proved against a new trustee to substantiate any suggestion that his acts were influenced by promises made to the settlor before appointment (cf. Underhill's Law of Trusts and Trustees, 10th ed., pp. 249 and 261).

It is less common for a settlor to reserve power to dismiss trustees. The point has been made that a settlor empowered both to appoint and remove trustees at his pleasure is in fact a trustee (Potter and Monroe, Tax Planning, 2nd ed., p. 64); although the effect of such powers might be similar to his being a trustee it would seem that he would be at one stage removed from being a trustee.

If, in the circumstances of any particular case, it is considered advisable to omit powers to dismiss trustees and to appoint successors, it is always possible for the settlor to include in the settlement a list of successors to his first-named trustees. Should none of the named successors be available it is unlikely that the surviving trustees would make a new appointment without informal consultations with the settlor.

Estate duty position

The Finance Act, 1894, s. 2 (1) (*c*), incorporating the Customs and Inland Revenue Act, 1881, s. 38, as amended, imposes a liability for estate duty on the death of a settlor of any settlement whereby an interest in any property passing thereunder for life or any other period, determinable by reference to death, is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property. It is sufficient for some kind of interest to be reserved, however it is kept, provided for or secured to the settlor (*A.-G.* v. *Gosling* [1892] 1 Q.B. 545 (D.C.), at p. 549, *per cur.*).

Again, it is enacted that any disposition made by the deceased, in favour of a relative of his, must be treated, for the purposes of s. 2 (1) (*c*), as a gift unless full consideration in money or money's worth had been paid to him for his own use or benefit, or the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only (Finance Act, 1940, s. 44 (1), as amended by Finance Act, 1950, s. 46). The reference to a disposition by the deceased includes a reference to its being made by him and another jointly, or by another at his direction whether with or without the consent of any other person (Act of 1940, s. 58 (4)).

Provided that under the settlement the settlor is not an object, and that no resulting trust can spring up in his favour, the retention by him of such fiduciary power as to direct the trustees on the question of distributions should not rank as a "reservation" within the meaning of s. 2 (1) (*c*). Accordingly, a settlement with such a reservation should be clear of estate duty liability on the settlor's death occurring on or after the fifth anniversary of the execution of the settlement. Similarly, no liability for estate duty would arise by the existence of a clause requiring the trustees to obtain the settlor's consent to appointments proposed by them (*Commissioner of Stamp Duties of New South Wales* v. *Way* [1952] A.C. 95 (P.C.)). However, this is not to recommend the inclusion of such clauses in new settlements and it would be prudent to avoid them (cf. Potter and Monroe, Tax Planning, 2nd ed., p. 166).

N. D. V.

(Concluded)

A Conveyancer's Diary

ATTESTING WITNESS'S REMUNERATION

BEFORE the Wills Act, 1837 (still to be found referred to in his great work by Mr. Jarman, if the tradition of conveyancers is to be trusted, as "the recent legislation"), a devise of land was required to be attested by "credible" witnesses. This was a requirement of the Statute of Frauds, and a witness was not a "credible" witness for this purpose if he took a beneficial interest under the will. Failure to comply with this requirement rendered invalid not merely the devise to the attesting witness but the whole will. This state of affairs was reformed by the Wills Act, 1752, which introduced the now familiar principle that an attesting witness forfeits any benefit given to him by the will but without any effect on the validity of the will. This provision is now reproduced in s. 15 of the Wills Act, 1837, in an extended form which refers also to the spouse of an attesting witness. Its effect is very familiar. Its precise wording (and since this article is wholly concerned with the section, the wording is important) is, perhaps, not quite so, and I therefore reproduce here its salient provisions: "If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of . . . any real or personal estate . . . shall be thereby given or made, such devise [etc.] shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person . . . be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will."

Future disqualification

No difficulty arises on this section if the disqualification operates immediately, as in the usual case by reason of an immediate benefit given to the attesting witness by the will. But what if the disqualification operates (if it operates at all) at a future date? The first case of this kind under the section appears to have been *Thorpe* v. *Bestwick* (1881), 6 Q.B.D. 311. The facts appear clearly in the short judgment of Mathew, J., which was as follows: "... The policy of the Wills Act in depriving the attesting witness of any legacy given by the document of bequest is not to allow wills to be proved by the

evidence of persons benefited by them, and it makes void a devise to an attesting witness, or to his or her wife or husband. In the present case the plaintiff, when the will was attested, took no benefit under it, but he subsequently married the devisee, and I am asked to hold that the result of this marriage is to destroy the validity of the devise. But there is no such provision in any part of the Act . . ." Reference was then made to s. 24 of the Act, which provides that a will takes effect as if executed immediately before the death, which, however, the learned judge dismissed as applying not to the persons benefited but only to the property to be taken; and he concluded that there was nothing in the Act to affect the validity of the devise to the plaintiff's wife.

Solicitor-trustee's charging clause

Another problem which can arise on this section is on the meaning of the words "beneficial devise, legacy, estate, interest, gift or appointment of . . . any property." In *Re Pooley* (1888), 40 Ch. D. 1 (another archetypal case on s. 15), the will contained an ordinary solicitor-trustee's charging clause and one of the executors and trustees appointed thereby was a solicitor. He was also one of the attesting witnesses. Was he entitled to charge his professional costs for time expended, etc.? Stirling, J., held that he was debarred from so doing by s. 15, and his decision was upheld in the Court of Appeal. In view of things to come, it is interesting to note the argument for the appellant of Mr. Cozens-Hardy, as he then was. His contention was that this was not a "beneficial devise" etc. Were it not, he went on, for the rule in equity that a trustee shall not make a profit out of his office, a solicitor-trustee would be able to make professional charges for business done by him for the estate, and all that the charging clause did was to negative the application of the rule in equity. A legacy imported a bounty; in the case before the court, the trustee was only to be paid for the work he did, and he gave a full consideration. And then the suggestion was made (at that time a novel one) that a trustee entitled to make professional charges might have to pay legacy duty on them. Cotton, L.J., referred to the argument for the appellant "that if we hold this to be a legacy to [the executor concerned] it will be a legacy to any future trustee of the will who may be a solicitor, and that the consequences as to legacy duty will follow. That may possibly be so, but as regards the appellant we have only to consider whether this direction is not in substance a gift to him . . . It is urged that it is not a gift, for he has to work for what he receives. That is true, but the clause gives him a right which he would not otherwise have to charge for the work if he does it, and that, in my opinion, is a beneficial gift within the meaning of the section." Lindley, L.J., said that apart from the clause the appellant could not get anything out of the estate for his services, and "I cannot say that a clause which enables him to get something out of the estate is not a gift to him" within the meaning of the section. Bowen, L.J., expressed agreement.

The point about legacy duty actually arose shortly after this decision, in *Re Thorley* [1891] 2 Ch. 613 (C.A.), in which it was held, that sums received by trustees pursuantly to a direction in a will that every trustee should have £250 a year out of the profits of a business while they carried it on were subject to legacy duty. This decision was applied to an ordinary solicitor's charging clause in *Re Brown* [1918] W.N. 118. These decisions moulded the practice of the Revenue for some time, but in the last years of the legacy duty the practice was to charge duty only where a fixed annual sum was payable (as in *Re Thorley*), and not where ordinary professional charges were made (as in *Re Brown*).

Attesting solicitor subsequently appointed trustee

The facts in *Re Royce's Will Trusts* [1958] 3 W.L.R. 676, and p. 859, *ante*, exhibited a kind of fusion between those in *Thorpe* v. *Bestwick* and *Re Pooley* respectively. On the death of one of the executors and trustees appointed by a will which contained an ordinary solicitor's charging clause, one of the attesting witnesses was appointed trustee in his place. He was a solicitor. Was he entitled to charge his professional expenses? This question was put to himself more fully by Wynn Parry, J., in this way: It had been held, and the proposition was beyond dispute, that the provision that a solicitor is to be entitled to charge is a legacy. If a person is named in the will as executor and as a solicitor, and the will contains a charging clause, then, of course, at all material times he is a member of a class of persons who have the right to make professional charges. If, however, he only enters the class after the death of the testator, but has attested the will, is he after entering the class after the death of the testator within the mischief of s. 15? The learned judge referred to the authorities, including the argument for the appellant in *Thorpe* v. *Bestwick*, which was largely adopted on behalf of the solicitor-trustee in this case, and balanced the arguments: on the one hand, that the result of the appointment of the solicitor as trustee had been to enable him to retain out of the assets something which the law would not otherwise have allowed him; on the other hand, that s. 15 was principally concerned with proving a will. There then remained a question of construction: has an attesting witness, although not in the class of beneficiaries when the will is proved, any right if he afterwards enters the class to take a benefit conferred on that class? That, in the view of Wynn Parry, J., was a difficult question. His conclusion was that the only safe view to take was that if a man attests a will he should not in any way be enabled to take a benefit under that will.

The historical antecedents of this decision are certainly congruous with it, and in the forefront of those one might put the somewhat stricter, or at least different, view of the duties of the office of trustee which the judges of the *Re Thorley* era entertained, as compared with that which is now current. Not that trustees are ever encouraged to line their pockets with the trust assets: the Chancery Division may be trusted to be as quick to search out an impropriety as ever it was. But it is now recognised that one of the soundest methods of administering a trust is to appoint the family solicitor to be a trustee and to enable him to charge for his professional services. Such services will in any case be necessary, and a person familiar with the problems of the trust will deal with them more quickly and thus more cheaply than a stranger. And, after all, the taxing masters are there to see that the charges made are reasonable if a co-trustee feels any doubt about them. Against this background, the argument which was adduced to the court in *Re Pooley*—that a right to charge constitutes not a legacy but merely the lifting of a disabling rule—would, I think, be more sympathetically received to-day than it was in 1888. But the decisions the other way have never been questioned and are too strong for any such argument to prevail even in a tribunal entitled to review them. It is in these decisions, rather than in the language of s. 15, that there lies the mischief of *Re Royce's Will Trusts* (if one may use that expression of a decision so amply justified by past authorities). Fortunately, the remedy is a simple one: solicitors and other professional men should not attest wills.

"A B C"

Landlord and Tenant Notebook

CONTROL: RESPONSIBILITY FOR REPAIRS

THE decision in *Regis Property Co., Ltd.* v. *Dudley* [1958] 3 W.L.R. 647 (H.L.); p. 844, *ante*, concerned two matters: evaluation of responsibility for repairs under the Rent Act, 1957, Sched. I, para. 1, and the meaning of a "fair wear and tear" exception. What was decided about the latter is probably of more lasting importance, and I propose to deal with it in a later article; but the decision on evaluation is of considerable interest to all who are concerned with controlled premises.

The provisions for calculating the repairs increase are as follows: If under the terms of the tenancy the tenant is responsible for all repairs, the appropriate factor, i.e., the multiple to be applied to the gross rateable value, shall be four-thirds; if *under the terms of the tenancy* the tenant is responsible for some, but not all, repairs, the appropriate factor shall be such number less than two but greater than four-thirds as may be agreed in writing between the landlord and the tenant or determined by the county court; and the problem was one of applying the second mentioned provision to the facts of the case. But before dealing with these, I may usefully recall some of the history of this legislation as regards its attitude to responsibility for repairs.

Terms of the tenancy

The old principal Act, the Increase of Rent, etc., Restrictions Act, 1920, made no express reference to the terms of the tenancy when, by s. 2 (1) (*d*) (i) and (ii), it authorised increases in rent "where the landlord is responsible for the whole of the repairs" and "where the landlord is responsible for part and not the whole of the repairs," respectively; nor was there any mention of any contractual responsibility which might be borne by the tenant. It may be that Parliament considered that the "someone's got to hold the baby" principle applied; some justification for this view might be found in *Broggi* v. *Robins* (1899), 15 T.L.R. 224, in which agents for landlords of weekly properties explained that such landlords were wont to effect repairs for which they were not liable to the tenants, doing so not necessarily from motives of altruism but in order to preserve capital assets. There is also the consideration that under Public Health Act and Housing Act powers local authorities can cause landlords to effect many such repairs. But it was made clear in the course of *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131 (C.A.), and held in *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, that, as it was put in the former case, the Rent, etc., Restrictions Acts did not alter or enlarge the contract between the landlord and tenant; in the latter a landlord established that he was not liable for repairs though he had increased the rent under the above-mentioned paragraph.

The Act of 1954

There was a provision in s. 2 (5) of the 1920 Act to the effect that the landlord should be deemed responsible for any repairs for which the tenant was under no express liability; indeed Lawrence, L.J., dissenting from his colleagues in *Morgan* v. *Liverpool Corporation*, considered that this imposed a positive obligation on the landlord. When the Housing Repairs and Rents Act, 1954, was passed some attention was given to the matter by the legislature. Besides repealing the subsection mentioned, this Act enacted, in s. 30 (1): "For the purposes of this Part of this Act . . . the landlord shall be deemed, *as between himself and the tenant*, to be wholly responsible for the repair of a dwelling-house in any case where the tenant is under no express liability to carry out any repairs" (my italics). But there is nothing to suggest that this would enable any tenant to sue a landlord, not bound by a term of the tenancy, for failure to carry out repairs: the remedy was cancellation or suspension of the repairs increase.

The 1954 Act re-defined "repair" and the remaining provisions of s. 30 contained an elaborate code for assessing and allotting responsibility; that section was duly repealed by the Rent Act, 1957, s. 26 and Sched. VIII.

The rent limit

Further, the Rent Act, 1957, abolishing the standard rent norm, introduced a "rent limit" the amount of which depends on the extent to which the parties to the tenancy are liable for repairs. There is nothing in the Act creating a presumption, as there was under the 1920 and 1954 Acts. But, after Sched. I, Pt. I, has dealt with the adjustment of rent limit by reference to the factor of extent, there are certain provisions in Pt. II of that Schedule which deserve notice; and this though, according to the decision in *Regis Property Co., Ltd.* v. *Dudley*, they have no bearing on the effect of Pt. I.

Part II concerns "abatement for disrepair," and opens with para. 3, applying it to cases in which the tenant serves on the landlord a form "stating that the dwelling or any part thereof is in disrepair by reason of defects specified in the notice, and that those defects *ought reasonably* to be remedied, having due regard to the age, character and locality of the dwelling" (my italics).

But then, by para. 4 (4): ". . . if on an application by the landlord the county court is satisfied, as respects any defect specified in a certificate of disrepair, that it is one for which the tenant is responsible, the court shall cancel the certificate as respects that defect." And, later we find in para. 15: ". . . references to defects for which the tenant is responsible are references to defects for the remedying of which, *as between the landlord and the tenant*, the tenant is responsible, *or* defects which are due to any *act, neglect, or default* of the tenant or any person claiming under him or any *breach by the* tenant or such a person of any *express agreement*" (my italics).

The effect, as regards certificates of disrepair, appears to be brought about by a combination of forces. The "ought reasonably to be remedied" does not, in my submission, call for any moral judgment. The 1957 Act, unlike that of 1954, does not actually define "repair"; but the "having due regard to the age, character and locality of the dwelling" indicate a standard, and the "ought reasonably to be remedied" appears to require that whether or not a defect should justify a modification of the rent limit must be judged by reference to the three factors specified.

So far, the landlord is the person responsible; but there are exceptions of three kinds which he may be able to invoke. First, if "as between the landlord and the tenant" the latter is responsible for the defect—and para. 15 does not insist on express responsibility—a certificate can be cancelled as regards that defect; secondly, the same applies to defects

due to "any act, neglect, or default of the tenant or any person claiming under him" and, thirdly, to any breach by the tenant or by a person claiming under him of *any* express agreement.

One might say that a valiant attempt has been made, when relating the amount of rent recoverable to state of repair, to provide for everything; but if any Moot Club should be short of subjects, I would suggest a case of damage done by a heavy vehicle crashing into the premises (there have been two such incidents since I began this article).

Behaviour of the tenant

I have examined at some length the provisions of reduction in rent limit contained in Pt. II of Sched. I because, in *Regis Property Co., Ltd.* v. *Dudley*, the attempt was made to use them as a guide to the interpretation of provisions for rent limit in Pt. I of that Schedule.

The tenancy agreement of a controlled flat made the tenant liable for the repair of the interior in general and for keeping baths, sinks, cisterns and waste and other internal pipes clean and open and in proper repair and order in particular. The provision by which the second mentioned obligation was expressed went on: "and shall be responsible for all damage occasioned to their own or other flats through any breach of this rule *or* through the stopping up or bursting of the said baths, etc., *due to the negligence* of the tenants or their servants . . ." (my italics). It would be interesting to know whether this part of the rule enlarged or reduced the scope of the earlier part.

The landlords applied to the county court to determine the factor—between four-thirds and two—by which the 1956 gross value figure could be multiplied for rent limit purposes. Having heard evidence by the landlords' witnesses—which supported the contention that they were liable for rather more than is usually admitted by landlords—and likewise by tenant's witnesses tending to show how onerous were the tenant's covenants, the judge concluded that discharge of the landlords' obligations would cost them some £7 5s. a year, while the tenant would be spending some £7 7s. a year carrying out his part of the bargain. And he determined the factor at five-thirds. The landlords were not satisfied, and their complaint amounted to this: the county court judge had taken into consideration repairs for which the tenant would be responsible at common law.

Having regard to the insistence on "the terms of the tenancy" in Sched. I, para. 1 (2) and (3), there appears to be much in favour of the proposition that when the express covenants do not cover the ground, implied obligations should be disregarded. The sub-paragraphs specify the terms of the tenancy, not the fact of the relationship. But, while the Court of Appeal considered that in the case before them nothing was left to implication—and Lord Tucker substantially agreed with this view—Viscount Simonds was emphatic in laying down that "all" repairs included those repairs, if any, which the tenant can be called upon to execute by invoking the doctrine of permissive waste or any implied obligation on his part arising out of the relation of landlord and tenant or even, as was suggested, by reason of his negligence.

And while the House of Lords refused to consider that the provisions of Pt. II of the Schedule (with the references to neglect, default, etc., which I have mentioned) had anything to do with the interpretation of Part I, it was common ground that, though the character or proclivities of the particular tenant were not to be considered, it was necessary to assume some kind of tenant; not a perfect tenant, but a "reasonably careful" tenant, when assessing the cost of the repairs which the tenant would have to bear. "The ordinary average man with all his imperfections and liability occasionally to fail to maintain that standard of care which the law requires of him in his relation to his neighbours" is how Lord Tucker put it.

Comment

While Viscount Simonds approved Pearce, L.J.'s view of the "concurrent liability" position: "such repairs are in fact a responsibility under the express terms of the agreement. The fact that there may be a concurrent liability at common law does not alter that fact . . . if one applies the test of common sense and practice, one can hardly imagine a landlord claiming against a tenant in respect of them other than under the express covenant," this appears to ignore what was decided, *inter alia*, by *Jones* v. *Hill* (1817), 7 Taunt. 392: there *is* no action for waste when the tenancy agreement deals with the matter.

The introduction of a "hypothetical tenant" who is reasonably careful, if this was necessary, seems to leave out of account the possibility of damage due neither to ordinary use nor to negligence. Lord Morton said that the burden on the tenant ought not to be estimated on the footing that he would make that burden heavier by reckless behaviour or wanton destruction; but what of damage by accidental fire, by third parties' negligence, or even by the parties' deliberate acts?—for, besides the new items concerning damage by motor vehicles which I have mentioned, a case has been reported of deliberate window-smashing.

R. B.

Mr. REGINALD ETHELBERT SEATON has been appointed Chairman of the Court of Quarter Sessions for the County of London in succession to Mr. Archibald William Cockburn, Q.C., who is to resign on 11th January, 1959.

The Attorney-General has made the following appointments at the Central Criminal Court: Mr. M. J. H. TURNER to be Second Senior Prosecuting Counsel to the Crown; Mr. J. M. G. GRIFFITH-JONES to be Third Senior Prosecuting Counsel; Mr. E. J. P. CUSSEN to be First Junior Prosecuting Counsel; Mr. J. H. BUZZARD to be Second Junior Prosecuting Counsel; Mr. S. A. MORTON to be Third Junior Prosecuting Counsel. The Attorney-General has also appointed Mr. J. C. PHIPPS to be Prosecuting Counsel to the Crown at the North London Sessions in succession to Mr. S. A. Morton. Mr. Phipps retains his appointment as Junior Counsel to the Crown in appeals from Metropolitan Magistrates to London Sessions.

Councillor R. H. Bryant, solicitor, of St. Leonards-on-Sea, has been re-elected Mayor of Hastings.

Mr. A. G. Graves, clerk of the peace for Middlesex, clerk to the Lieutenancy and to the advisory committee, and hon. secretary of the Society of Chairmen and Deputy Chairmen of Quarter Sessions in England and Wales, is to retire in February, 1959, after fifty years' local government service.

Major R. H. Jerman, solicitor, and town clerk of Wandsworth for twenty-four years, is to receive the Freedom of the Borough when he retires in February, 1959.

Lieutenant-Colonel D. W. Jones-Williams, solicitor, of Dolgelley, clerk of the peace, and clerk of the county council for Merioneth, has been re-elected chairman of the Montgomery and Merioneth Territorial Army Association.

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Hendon.—M. E. NEAL & SON, 102 Brent Street, N.W.4. Tel. Hendon 6123. Established 1919.

Hendon and Colindale.—HOWARD & MANNING (G. E. Manning, F.A.L.P.A., F.V.I.), Auctioneers, Surveyors and Valuers, 218 The Broadway, West Hendon, N.W.9. Tel. Hendon 7686/8 and at Northwood Hills, Middx. Tel. Northwood 2215/6.

Ilford.—RANDALLS, F.R.I.C.S., Chartered Surveyors and Auctioneers (Established 1884), 67 Cranbrook Road. Tel. ILFord 2201 (3 lines).

Leyton.—HAROLD E. LEVI & CO., F.A.L.P.A., Auctioneers and Surveyors, 760 Lea Bridge Road, Leyton, E.17. Tel. Leytonstone 4423/4424.

Leyton and Leytonstone.—R. CHEKE & CO., 252 High Road, E.10. Tel. Leytonstone 7733/4.

(continued on p. lx)

Leytonstone.—COMPTON GUY, Est. 1899, Auctioneers, Surveyors and Valuers, 55 Harrington Road. Tel. Ley 1123. And at 1 Cambridge Park, Wanstead. Tel. Wan 5148; 13 The Broadway, Woodford Green. Tel. Buc 0464.

Leytonstone.—PETTY, SON & PRESTWICH, F.A.I., Chartered Auctioneers and Estate Agents, 682 High Road, Leytonstone, E.11. Tel. LEY 1194/5 and at Wanstead and South Woodford.

Mill Hill.—COSWAY ESTATE OFFICES, 135/7 The Broadway, N.W.7. Tel. Mill Hill 2422/3422/2204.

Putney.—QUINTON & CO., F.A.I., Surveyors, Chartered Auctioneers and Estate Agents, 153 Upper Richmond Road, S.W.15. Tel. Putney 6249/6617.

South Norwood.—R. L. COURCIER, Estate Agent, Surveyor, Valuer, 4 and 6 Station Road, S.E.25. Tel. LIVingstone 3737.

Stanmore.—GLOVER of STANMORE, F.V.I., The Broadway (and at Station). Grimsdyke 2241 (5 lines).

Tottenham.—HILLYER & HILLYER (A. Murphy, F.A.I., F.V.A.), Auctioneers, Surveyors, Valuers and Estate Managers, 270/2 West Green Road, N.15. Tel. BOW 3464 (3 lines).

Wandsworth (Borough of), Battersea and S.W. Area.—MORETON RICHES, Surveyor, Auctioneer and Valuer, House and Estate Agent, 92 East Hill, Wandsworth, S.W.18. Tel. VANdyke 4166/4167.

Wood Green.—WOOD & LOACH, Chartered Auctioneers and Estate Agents, Surveyors and Valuers. 723 Lordship Lane, N.22 (Adjacent Eastern National Bus Station, close to Wood Green Tube Station). Tel. Bowes Park 1632.

HERE AND THERE

WORDS FOR WINE

IT is now established by the verdict of twelve good citizens and true (the immemorial Palladium of our liberties) that the company which deals in "Spanish champagne" committed no criminal offence under the Merchandise Marks Act in respect of the sale of the twelve bottles in question in the recent prosecution at the Old Bailey. Right, then, we start from there. What seems to have impressed the jury (and must surely make a startling impression on the ordinary reasonable wine buyer) is the curious looseness of terminology, often amounting to poetic licence, which appears to have crept into the proceedings of the wine trade, or a substantial section of it. It certainly started a long time ago and if you turn back to the pages of THE SOLICITORS' JOURNAL in 1858 you will find advertisements for Cape Sherry at 20s. and 24s. a dozen. Somewhere about that time, then, the thin end of the wedge was being driven into the cask, and now much of the wine trade is a welter of synonyms, metaphors, aliases and approximations, with Humpty Dumpty's famous canon of construction dominant: "When *I* use a word, it means just what I choose it to mean—neither more nor less." Nor would Humpty Dumpty tolerate Alice's tentative doubt "whether you *can* make words mean so many different things."

FIGHTING FOR FRANCE

FOR a logical and reasonable people the French have a peculiar capacity for allowing themselves to be outflanked both in war and peace. "Australian burgundy" has been on the market for a very long time, and "Spanish burgundy" is no novelty, yet the French picked no bone with the producers. When the ancient names of Graves and Sauterne were taken to the Antipodes no protest was registered that they were being taken in vain. But now, awake at last, France is making a Verdun of champagne and the popping of a million corks announces that the barrage is laid down and the enemy shall not pass. During the hearing of the case the wine butler of the Euston Hotel, called as a witness for the prosecution, appreciatively described champagne as being "as French as the Folies Bergère," and, though for the English this traditional wine of celebration has more than a touch of frivolity about it, there is something in it which stirs the ancestral patriotism of the French, as well as their commercial common sense. The Champagne country lies athwart the great invasion route by which, time after time, the enemy has thrust at the heart of the nation. Here is Rheims where Joan of Arc brought the Dauphin to be crowned. Here are Valmy where the Prussians were halted at the start of the Revolutionary Wars, Verdun where they were held in the first World War and Sédan, doubly tragic. The river of Champagne is the Marne. Is it merely fanciful to link all this with a sparkling wine? I do not think so. When at the end of the first World War the wave of the German invasion was at last rolled back from this blood-drenched countryside, an exultant song was sung which went something like this:—

"Non! Non! Vous ne l'aurez jamais
Le vin joyeux de nos campagnes
Et c'est bien la dernière fois
Que vous pillez notre champagne.
Non! Non! Vous ne l'aurez jamais,
Le vin joyeux des plaines de la Marne.
Cette merveille en qui s'incarne
Le pur trésor du sol français."

I wish I could render you the tune which embodies both the rhetoric and the reasonableness of the French. The fact that the invading wave again washed over that land has not made it less dear to them.

THE AULD ALLIANCE

THERE was a touch of indignant French reasonableness in the very English mouth of the prosecuting counsel when, referring to previous unchallenged appropriations of French territorial names in the wine trade, he said: "Is not that argument rather like a man saying: 'I have stolen your hat, your coat, your jacket and your vest. Now you are not going to be so unreasonable as to object when I steal your trousers'?" That a British jury should have ignored so plain a statement of the case has caused incredulous consternation beyond the Channel. A chain of Paris bars called "Whisky à Gogo" (or "Whisky Galore") has, for example, temporarily closed its doors in protest, placarding the premises with the declaration: "Le Scotch est Anglais, le Champagne doit rester Français." This indication of the direction of possible reprisals has caused mixed indignation and anxiety north of the Border. That Scotch should be called English is a blasphemy not to be ignored. *The Scotsman* has already asked in its columns why Scotland should suffer for the decision of a foreign court and reproaches the French for forgetting "the Auld Alliance." Perhaps the men of Champagne will be encouraged thereby to join battle afresh in the Parliament House, if they find that the "Spanish champagne" has penetrated as far north as that. The hearing would certainly not be less lively than that in London. A Scottish jury with the Scripture and the Kirk for its inheritance would, no doubt, have relished the defence's reference to David and Goliath and might have been glad to hear something about Naboth's vineyard, except that Naboth was not, I think, marketing its produce as "Judæan Falernian." In London a great deal of the successful argument for the defence seemed to rest on the suggestion that in the age of the Common Man, the Common Man has a right to call his white sparkling wine champagne, no matter what its origin, if he thereby boosts his ego, and that the trading community has a right to acquiesce in his amiable fantasy and abet him in dreaming that he dwells in marble halls streaming with "bubbly." It may be so in law and, as one of the witnesses said, it may also be right to call margarine butter, so that the poor man may feel he is having butter. But, if that is so, then in the practical politics of commerce this general ennobling will surely produce a state of affairs where "when every wine is somebody, then none is anybody."

RICHARD ROE.

At a general meeting of the ROYAL INSTITUTION OF CHARTERED SURVEYORS, to be held at 5.45 p.m. on Wednesday, 14th January, 1959, Mr. H. J. Eldridge, B.Sc., of the Building Research Station, will give an address on "The Maintenance of Modern Buildings," illustrated by lantern slides.

Mr. W. G. E. Ormond, F.R.V.A., assistant city treasurer of Liverpool, has been elected President of the RATING AND VALUATION ASSOCIATION, and Mr. H. Howard Karslake, F.R.I.C.S. (Spec. Dip. Rating), F.R.V.A., F.I.Hsg., has been elected Vice-President.

RENT ACT PROBLEMS

As explained in "Current Topics" at p. 944, *ante*, this is the last group of Rent Act Problems to be published as such. Readers are invited to submit their problems, on the Rent Act or any other subject, to the "Points in Practice" Department and a selection thereof will be published from time to time.

Decontrol—Option to Renew Lease at Same Rent or "At Such Rent as May Then be Authorised by Law"

Q. We act for a client who has the lease of a self-contained flat which commenced on 25th December, 1952, for a term of seven years at a rent of £171 per annum. The flat is in the London area, and became decontrolled under the Rent Act, 1957. When the rent was fixed by the lease at £171 per annum, we believe that this was a rent imposed by the local council as part of their planning consent on the construction of the flat. The lease contains an option exercisable by the tenant that on giving three months' notice before the expiration of the seven-year term he may have a further term of seven or fourteen years granted to him upon the same terms as before (with the exception of the renewal clause) but paying "the same rent as is herein reserved or at such rent as may then be authorised by law." What rent will our client have to pay if he exercises his option for renewal?

A. There are, in our opinion, two possible solutions: (i) The option, having been based on the assumption that the premises would be subject to some form of rent control in 1959, is altogether void (there being no "rent authorised by law"). (ii) The option gave the tenant a right to a new lease at a rent to be determined in one of two ways, one of which is no longer available: he is therefore entitled to a new lease determined in the other way. In our view, while we know of no decision with which the facts submitted are on all fours, a court would conclude that the tenant was to be entitled to a new lease; and while the *contra proferentem* rule might not, in the circumstances, be held to be applicable—the intention, though not expressed, having been that the landlord was to have the benefit of any change in maximum permitted rent—the impossibility of performing the ". . . or such rent as may then be authorised by law" has made it obligatory on the landlord to grant a new lease at "the same rent as is herein reserved": *Wigley* v. *Blackwal* (1600), Cro. Eliz. 780; *Bute* (*Marquis of*) v. *Thompson* (1844), 13 M. & W. 487; *McIlquham* v. *Taylor* [1895] 1 Ch. 53 (see judgment of Lindley, L.J., at pp. 63, 64).

1958 Act, s. 3—Landlord's Offer of New Tenancy Ignored

Q. A landlord of a decontrolled maisonette served his tenant on 31st October, 1957, with Form S expiring 6th October, 1958, and after seeking expert advice offered the tenant on 11th September, 1958, in writing, terms for a new tenancy of three years, giving the tenant one calendar month for acceptance. No reply to this letter has been received, although the landord has reasons for knowing the tenant received his letter containing the offer. The landlord now wishes to apply to the court for an order for possession and has referred us to the *Daily Mail* publication on the Landlord and Tenant (Temporary Provisions) Act, 1958, on p. 15 of which it sets out several points for tenants to bear in mind, one of them being "To fail to accept an offer (e.g., by ignoring it) loses you your rights, just as if you had refused." Is there any authority for the suggestion that ignoring an offer is tantamount to failing to accept it?

A. We agree with the proposition, though we are not able to cite any authority directly in point. The phraseology of the Landlord and Tenant (Temporary Provisions) Act, 1958, s. 3 (1) (*a*), warrants, in our opinion, the view that the condition is satisfied either by one particular reaction, namely, refusal, or by non-reaction: "or failed" meaning "or knowingly omitted to." One can compare the position in the law relating to formation of contract, by which uncommunicated acceptance has the same effect as refusal: *Brogden* v. *Metropolitan Rly. Co.* (1877), 2 App. Cas. 692. Use might also be made of decisions showing that ignoring a request for consent to assign or sub-let is tantamount to unreasonable refusal of consent: *Lewis & Allenby* v. *Pegge* [1914] 1 Ch. 782; *Wilson* v. *Fynn* [1948] 2 All E.R. 40.

"THE SOLICITORS' JOURNAL," 25th DECEMBER, 1858

On the 25th December, 1858, the Solicitors' Journal said that "a constantly increasing proportion of mankind are, in the judgment of those who pretend to be the best authorities, entitled to enjoy immunity from the usual penalties of violating the law. It is said that as civilisation advances . . . insanity . . . is found more frequently. Whether this melancholy proposition must be accepted . . . we shall not undertake to say. But one result of intellectual cultivation in this country has undoubtedly been that a larger number of persons are ready to pronounce others to be insane . . . It is . . . most important . . . to take care that between eager theorists and scrupulous juries the fundamental principles of public justice are not lost sight of. These considerations render it desirable that the medical evidence adduced last week in a trial for murder at York, to establish the prisoner's insanity should be canvassed . . . Dr. Forbes Winslow, the most distinguished expert who was called, did not deal much in those dangerous doctrines of irresponsibility for crime which he has sometimes promulgated. But his testimony . . . was extremely weak . . . He had only visited the prisoner once and it is quite possible . . . that the dullness and imbecility of mind which he observed were counterfeited. The physiognomy, expression, gait and slowness of apprehension of the accused do not go for much . . . Dr. Winslow did not expressly say, and we hope did not intend to imply, that 'a low order of intellect' ought to be absolved from the punishment due to murder . . . On cross-examination, three letters written by the accused while in prison were read to Dr. Winslow and he was obliged to admit that he should not . . . have believed him capable of writing them . . . Society, we cannot but think, is in some danger if persons 'whose animal instincts and passions are disproportionately strong compared with their powers of mind' are as numerous everywhere else as they appear to be in the West Riding and are allowed the same immunity as has been granted to James Atkinson. The mad doctors . . . have a remedy for this evil—they would shut up all persons of disproportionately strong animal instincts in asylums and put them upon a course of field labour and water gruel for . . . life . . . But . . . we are unwilling to cover the whole land with gigantic receptacles for persons unable to control their passions and we prefer not to abandon the old idea that education, habit and the terrors of the law would, if properly applied, go far to put such persons in the way of doing what is represented by the keepers of asylums as impossible."

Mr. Neville Gill, solicitor, of Hexham, Newcastle-upon-Tyne, left £4,192 (£3,884 net).

Mr. Horace Milner Alderson Smith, solicitor, of Liverpool, left £112,233 (£109,271 net).

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Flower-piece

Sir,—I hope you will bring to the notice of your readers a delightfully original "legal definition" which I discovered in the *Manchester Guardian* of Saturday, 13th December. The correspondent reports from a meeting of lawyers in Karachi and quotes the chief justice of the West Pakistan High Court (or the president of the Karachi Bar Association—it is not clear whom he is reporting) as follows:—

> "Mandamus and certiorari are flowers of paradise, and the whole length and breadth of Pakistan is not wide enough to confine their perfume. If, in England, judges can stretch certiorari even to a rate inspector's assessment, we who are less conservative in interpretation and are often faced with a situation more fraught with political vicissitudes will have to go much farther."

ALBERT SHARPE.

Bexleyheath,
Kent.

The Solicitor's Income

Sir,—Your comments in your issue of 6th December on the article in the *Sunday Times* are, I think, untrue. It is not difficult to make a good income as a solicitor, although many would try to convince you otherwise. Too often in our profession is one met with complaints such as from the young admitted salaried man who says no one will pay him the salary he is worth, or from the partner who bemoans the rising cost of living and his failure to make an adequate living. In both cases they only have themselves to blame. The opportunities are there for those ready to take them.

Let me give you the facts in my own case. These are given in no boastful spirit, but do, I suggest, refute a great deal of the inaccurate talk that is around. I was admitted in 1952. I had previously obtained an LL.B. (Lond.) with honours. Incidentally, to take The Law Society's Honours Examination is, in my view, a complete waste of time. I did not bother and have never regretted it. It certainly has no extra financial reward and a law degree gives one all the basic theoretical knowledge one requires on a much wider basis. I had served a full five years' articles. I then did my two years' national service in the Army—incidentally, in a capacity having no legal connections at all. On the expiration of my Army service I joined an old-established, medium-sized firm near London with two partners early in 1954. I was paid £840 per annum on the basis of a six months' trial pending entry into partnership. In October of that year I acquired a third share in the practice for which I paid £2,000, and which I had to borrow—having no capital of my own. The value of such one-third share was then £1,100 per annum. By the end of a further two years a third share had increased in value to about £1,650 per annum, largely, I feel, through my efforts as young blood in an old family firm. As a result of the death of the senior partner some eighteen months ago, I acquired a further one-sixth share at the cost of £1,100. I had to borrow some further money to do this, but by the end of the year my indebtedness should be reduced to £2,500 in all. When entering into partnership I had been particularly careful over the terms which provided what I should pay for further shares of goodwill on the death and retirement of my partners. I have the right to buy out my surviving partner on death or retirement at one year's purchase. My income this year from the partnership on a 50 per cent. share should be close on £2,500.

My basic income is, therefore, £2,500 and shows every prospect of increasing annually. In addition, I lecture two evenings a week for the London County Council—an activity which is not very arduous in itself. This again is well within the powers of the average solicitor, but most will not undertake the work which, therefore, goes to young members of the Bar. I would like to emphasise, however, that this is entirely due to the reluctance of solicitors, not any prejudice on the part of principals of technical colleges. This brings in another £6 a week at least. Again, early on in my career, I secured and still retain an appointment as tutor to a well known correspondence college. This work, which largely involves the marking of papers, can be done in the home in the evenings. This brings in at least another £2 a week and involves at the most four hours work a week. I can already, therefore, account for £2,700 on a conservative basis.

To the enterprising solicitor there are other sources of income available. An appointment as commissioner for oaths in my area is worth another £50 a year. Furthermore, I find I can earn sums from time to time by submitting articles on legal topics to the various legal periodicals. I am now twenty-eight approaching twenty-nine and can truthfully say that I have an income approaching £3,000 from all sources and for which I admittedly work hard. I have no private income nor has my wife. I see no reason at all why my income should not reach £6,000 per annum by the time I reach forty (assuming I live that long). Before entering the law I had no legal connections, nor is my family possessed of even reasonable wealth or influence. I repeat, I am of no more than average ability and anyone could do what I have done so far. Perhaps, therefore, I am prejudiced, but I view the numerous complaints from all sides that we are a downtrodden profession with some derision.

A YOUNG SOLICITOR.

Surrey.

Magistrates' Domestic Jurisdiction

Sir,—I read with interest criticisms on matrimonial jurisdiction in magistrates' courts at pp. 867 and 889, *ante*. There is no reason whatever why an application for separation or for maintenance should not be required to set out on it full particulars of the allegations made. This is especially useful in cruelty cases. The respondent knows exactly what he has to meet; the petitioner is not allowed to waste time on irrelevancies: the justices know in advance what the essence of the case is, and the solicitors concerned are compelled to do in their offices work (preparing the application) which is so often done in a confused fashion in court. Let the parties make affidavits on which they can be cross-examined in maintenance cases. As you say, the justices' powers are now immense. Perhaps some day a stipendiary will be put on to tackle these cases where so often points of law are involved.

R. HANNING.

Woking.

A Driving Fault?

Sir,—The author of the article in the *Municipal Journal*, which I commented upon in my letter to you [at p. 856, *ante*], has said that his words were not to be read as suggesting that passing vehicles on the nearside was always wrong and that he was referring, particularly, to this method of overtaking a driver "hugging the middle of the road." He goes on to say that it is wrong to infer from his article that he is reflecting the views of magistrates' courts in the Midlands.

I would only comment that, in the circumstances, I am glad to find that my understanding of the article was mistaken.

S. P. BEST.

Sturminster Newton,
Dorset.

Judgment against Judges

Sir,—At an informal meeting of solicitors an interesting point was raised. From time to time solicitors are held liable in damages for giving advice which turns out to be wrong. One eminent solicitor raised the point as to the liability of a judge for giving a wrong judgment. The voting was ten against two in favour of holding the judge liable. What do you think?

GEO. JESSOP.

Brighouse.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

INCOME TAX: ROYALTIES PAID AFTER AUTHOR'S DEATH FROM CONTRACTS MADE BY HIM

Carson (Inspector of Taxes) *v.* Cheyney's Executor

Viscount Simonds, Lord Morton of Henryton, Lord Reid, Lord Tucker and Lord Keith of Avonholm. 25th November, 1958

Appeal from the Court of Appeal ([1958] Ch. 345; 101 SOL. J. 868).

This appeal was by the Crown from an order of the Court of Appeal which upheld an order of Harman, J., affirming a decision of the General Commissioners of Income Tax for the division of Bromley, Kent, before whom the sole surviving executor of the will of Reginald Evelyn Peter Southouse Cheyney, deceased, appealed against assessments to income tax made upon him under Sched. D of the Income Tax Acts, 1918 and 1952, for the years 1951–52 and 1952–53, the first and additional assessments totalling £10,000 for the year 1951–52 and £18,000 for the year 1952–53. The question for determination was whether certain sums paid to the executor after the death of Peter Cheyney as royalties under agreements entered into by him were assessable to tax under Case III or VI of Sched. D. There were four representative examples of those agreements before the court, three dealing with works which at the dates of the agreements were not yet written and in which, therefore, there was no copyright or property, and the fourth with the publication in French of extant works, already the subject of copyright. The Court of Appeal, Harman, J., and the commissioners held that the sums in question were rewards for professional services rendered by Peter Cheyney and that his death did not alter their nature so as to make them taxable under Case III or Case VI of Sched. D.

VISCOUNT SIMONDS said that the assessments for 1951–52 were governed by the Income Tax Act, 1918, and those for 1952–53 by the Income Tax Act, 1952, but there was no material difference between the relevant provisions of the two Acts. It was enough to refer to s. 123 of the 1952 Act under which income tax was chargeable under Case III of Sched. D in respect of "any interest of money, whether yearly or otherwise, or any annuity, or other annual payment," under Case V in respect of income arising from possessions out of the United Kingdom and under Case VI in respect of any annual profits or gains not falling under any of the Cases I to V and not charged by virtue of Scheds. A, B, C or E. It was not stated in the assessments under which of the Cases of Sched. D they were made. Before the commissioners and in the courts below it was contended that they were properly made under Case III or, alternatively, Case VI. Before the House Case V was also invoked but, in the view which his lordship took, nothing turned on this. A large part of the argument turned on *Stainer's Executors* v. *Purchase* [1952] A.C. 280, the respondents contending that it governed the present case and the appellant contending that it was distinguishable. The principle which emerged from that case was that payments which were in historical fact exclusively the fruit or aftermath of professional activity did not change their taxable character when the profession was discontinued. It was urged in that case that the contracts made by the deceased actor were "income bearing assets" and that the payments made to his executors were the income of such assets. But, as Lord Asquith of Bishopstone said, he "acted for money: he did not act for contracts." In both cases the payments were professional earnings, whatever the mechanism through which they were paid. *Prima facie* there was no reason why a professional man should not be taxed on an earnings basis but in the case of an author, whose earnings depended on the unpredictable popularity of his books in future years, an assessment in the earning year could be so arbitrary as to be patently unfair. But that did not entitle the Crown to regard payments in future years as anything but what they essentially were. An attempt was made to distinguish the contract under which the author granted a licence to translate one of his novels into French but the distinction was too fine to be material. It was not necessary to say anything about Case VI or Case V. The reasons for dismissing an appeal which relied on Case III were fatal to them too. The appeal should be dismissed with costs.

The other noble and learned lords concurred in dismissing the appeal. Appeal dismissed.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., A.-G., *Magnus*, Q.C., and *Alan Orr* (*Solicitor of Inland Revenue*); *Viscount Bledisloe*, Q.C., and *C. N. Beattie* (*Frere, Cholmeley & Nicholsons*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 740**

Queen's Bench Division

CRIMINAL LAW: RECEIVING: PROPERTY OBTAINED IN CIRCUMSTANCES AMOUNTING TO MISDEMEANOUR: PROOF REQUIRED

Director of Public Prosecutions *v.* Nieser

Lord Parker, C.J., Streatfeild and Diplock, JJ.
21st November, 1958

Case stated by Edmonton justices sitting at Tottenham.

The defendant was charged on two informations that he received a refrigerator and a television set knowing them to have been obtained under circumstances amounting to a misdemeanour, namely, in the first case, false pretences, contrary to s. 33 of the Larceny Act, 1916, and, in the case of the television set, in incurring a debt or liability, obtaining credit under false pretences or by means of other fraud contrary to s. 33. Evidence was given by a Mrs. Honey, who had been convicted of obtaining the goods, that she obtained them by false pretences and that she sold them to the defendant at considerably below their true value. The only other evidence for the prosecution was that of a police officer who had found the goods at the defendant's premises. He also produced a signed statement by the defendant in which he denied having bought anything from the first witness except the television set. The justices, being of opinion that there was no evidence that the defendant knew of the specific misdemeanour by which the goods had been obtained, dismissed the informations. The prosecutor appealed.

DIPLOCK, J., delivering the judgment of the court, said that where property had been obtained in circumstances which amounted to felony or misdemeanour, it was sufficient under s. 33 (1) of the Larceny Act, 1916, to charge and prove that the receiver knew that the property fell into the general category of property which had been obtained under circumstances which amounted in law to felony or misdemeanour; it was unnecessary to prove that he knew that the property was obtained under circumstances which amounted in law to the specific felony or misdemeanour by which they were in fact obtained. But although this was sufficient in the case of felonious receiving under s. 33 (1), more specific knowledge was required where property had in fact been stolen and it was desired to adduce evidence of guilty knowledge of the receiver under s. 43 (1) of the Act. It followed that, in the present case, the justices were right in holding as a matter of law that it was not sufficient to show that the accused knew that the goods were obtained by some dishonest means. The prosecution must go further and adduce evidence to show that he knew that they were obtained in circumstances which did in law amount to misdemeanour as opposed to felony. The justices were wrong, however, in supposing that it was necessary for the prosecution to adduce evidence to show that the accused knew the precise nature of the misdemeanour by which the property was in fact obtained. But the facts proved against the accused were precisely those facts from which in so many cases a receiver's knowledge that goods had been stolen was rightly inferred, and there was nothing in the evidence from which the justices could infer that the accused knew that the property had been obtained in circumstances amounting to a misdemeanour as opposed to having been stolen. There was thus no evidence of the essential ingredient of the offences with which the accused was charged, namely, knowledge by him that the property which he received fell within the category of property which had been obtained in circumstances which amounted to misdemeanour. The appeal must, therefore, be dismissed. Appeal dismissed.

APPEARANCES: *J. H. Buzzard* (*Director of Public Prosecutions*); *W. M. F. Hudson* (*J. H. Fellowes*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 757**

REVIEWS

The Probation Service. Edited on behalf of the National Association of Probation Officers by JOAN F. S. KING, B.A. 1958. London: Butterworth & Co. (Publishers), Ltd. £1 5s. net.

The Results of Probation. A Report of the Cambridge Department of Criminal Science. 1958. London: Macmillan and Co., Ltd. £1 1s. net.

The first-named book has been edited by Joan King on behalf of the National Association of Probation Officers. It traces the growth of the Probation Service and then, after a long chapter on methods of social casework generally, discusses casework in relation to probation and supervision. Chapters on after-care of discharged prisoners, etc., and on matrimonial conciliation follow, and there is a discussion of the probation officer's relations with the courts. Other chapters deal with matters of special interest to probation officers, e.g., their training and their National Association. We have little doubt that even the most experienced officers will find this a thoroughly useful book but it should be read by many other people. Its description of the workings of the Probation Service and of what probation officers seek to do is of very great interest and every judge, magistrate and magistrates' clerk who has the book will gain much helpful knowledge as to cases when probation should be used and as to the methods of probation officers. We recommend this book unreservedly to all who are concerned with the administration of criminal justice, and among the latter we include solicitors, for they will find in it not only much information of general interest but also, if they read it carefully, a good deal of material useful for the "plea in mitigation."

The study by the Cambridge Department of Criminal Science was noted at p. 781, *ante*. The study is based on research into the records of persons, both adults and juveniles, placed on probation in London and Middlesex and a failure is assessed as one who went wrong again after the making of the order either during its currency or within three years of its termination. The book is mainly tables of statistics, but Pt. I summarises the general results of the research in a readable and interesting manner. The statistics do not always bear out the rosy picture of probation so often painted in probation officers' reports, as it shows that the failure rate, especially for juveniles, is higher than might be expected. This reviewer must also quarrel with some of the occasional comments by the authors on the figures in their tables. When a failure rate of 43 per cent. among juveniles is shown, it scarcely seems right to call the rate of success "very encouraging" (p. 2). On the other hand, the authors call a success rate of 50 per cent. among adults (40 per cent. among juveniles) put on probation when they had already had two or more previous convictions "hardly encouraging"; in this reviewer's opinion, it is a surprisingly good result having regard to their records and involvement already in a criminal career (p. 7). However, even if the results of probation are sometimes revealed as disappointing, it is obvious that probation has saved very many persons from a life of crime and there would be far more offences and criminals without it. The success rate shown in the book well justifies the work of the many devoted men and women of the Probation Service. The book itself is full of statistics and could with advantage contain more summaries than it does, and we recommend it mainly to the specialised student of criminal justice.

The Lawyer's Remembrancer and Pocket Book, 1959. By J. W. WHITLOCK, M.A., LL.B., assisted by S. H. W. PARTRIDGE, M.A. 1958. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

It has been plausibly suggested that memory is often developed at the expense of judgment. If that is true (and we must not be taken to have asserted that it is), the Lawyer's Remembrancer and Pocket Book must have saved lawyers from many a judgment-imperilling exercise, for with it they can be judging, rather than trying to recall the niggling details, even on the wing. The 1959 edition is as liberating as ever.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Emergency Laws (Repeal) Bill [H.C.] [17th December.

Marriages (Secretaries of Synagogues) Bill [H.C.] [15th December.

Rights of Light Bill [H.L.] [16th December.

To amend the law relating to rights of light, and for purposes connected therewith.

Read Second Time:—

Overseas Resources Development Bill [H.L.] [16th December.

Read Third Time:—

Edinburgh Corporation Order Confirmation Bill [H.C.] [17th December.

Nuclear Installations (Licensing and Insurance) Bill [H.L.] [16th December.

Representation of the People (Amendment) Bill [H.C.] [15th December.

B. QUESTIONS

PROBATE AND ESTATE DUTY

VISCOUNT HAILSHAM said that the law required, as a necessary safeguard for the collection of estate duty, that executors should pay the duty in respect of the deceased's own personal property before they obtained probate. They need not, however, at that stage pay the duty on the deceased's real property. So long as the property was not sold the duty on real property was not payable until a year after the death and might, at the executors' option, be paid by instalments with interest over a period of eight years.

The duty the executors had to pay before probate was that in respect of the personal property of which the deceased was, to use the words of the Act, "competent to dispose;" that is, broadly speaking, his own personal estate. It did not normally include the duty payable on property passing under family settlements or on property given away by the deceased within five years of his death. Although the executors could not, of course, dispose of the deceased's property until they had obtained probate they could in practice raise the money for the duty in a number of ways. What was often done was that money was lent to the executors on the security of the estate by a bank or other financial institution and it was very exceptional for executors to meet serious difficulty in making those arrangements.

He understood that the Revenue authorities were prepared to discuss particular cases should any difficulty arise.

[15th December.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Eisteddfod Bill [H.C.] [16th December.

To make further provision for contributions by local authorities in Wales (including Monmouthshire) towards the expenses of the Royal National Eisteddfod.

Electricity (Borrowing Powers) Bill [H.C.] [15th December.

To increase the statutory limits imposed on the amounts outstanding in respect of borrowings by the Electricity Council and Electricity Boards.

Housing (Underground Rooms) Bill [H.C.]
[17th December.

To make provision as to the circumstances in which underground rooms are to be deemed for the purposes of s. 18 of the Housing Act, 1957, to be unfit for human habitation and, in connection therewith, to validate certain orders made with respect to underground rooms.

Mental Health Bill [H.C.] [17th December.

To repeal the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938, and to make fresh provision with respect to the treatment and care of mentally disordered persons and with respect to their property and affairs; and for purposes connected with the matters aforesaid.

Read Second Time:—

House Purchase and Housing Bill [H.C.]
[15th December.

Read Third Time:—

Adoption Bill [H.L.] [16th December.
Manoeuvres Bill [H.L.] [16th December.
National Debt Bill [H.L.] [16th December.
Slaughter of Animals Bill [H.L.] [16th December.

B. Questions

Legal Aid Contributions

The Attorney-General said that once the legal advice scheme was launched the Lord Chancellor would see what could be done about the financial provisions governing the rate of contribution of persons seeking legal aid. [16th December.

Local Government Commission

Mr. H. Brooke said that the Local Government Commission expected to announce early in January the areas with which its review would commence. [16th December.

STATUTORY INSTRUMENTS

Act of Sederunt (Legal Aid Rules), 1958. (S.I. 1958 No. 1872 (S.97).) 6d.
East Surrey Water Order, 1958. (S.I. 1958 No. 2060.) 11d.
General Grant Order, 1958. (S.I. 1958 No. 2083.) 5d.
Grants and Rates (Transitional Adjustments) Regulations, 1958. (S.I. 1958 No. 2084.) 7d.
Import Duties (Exemptions) (No. 23) Order, 1958. (S.I. 1958 No. 2075.) 5d.
Import Duties (Process) (No. 1) Order, 1958. (S.I. 1958 No. 2077.) 5d.
Import Duties (Temporary Exemptions) (No. 1) Order, 1958. (S.I. 1958 No. 2076.) 1s. 5d.
Import Duty Drawbacks (No. 2) Order, 1958. (S.I. 1958 No. 2078.) 7d.
Indian Military Service Family Pension Fund (Amendment) Rules, 1958. (S.I. 1958 No. 2066.) 6d.
London-Edinburgh-Thurso Trunk Road (Grantham and Great Gonerby By-Pass) (Variation) Order, 1958. (S.I. 1958 No. 2088.) 5d.
London-Great Yarmouth Trunk Road (Latymere Dam (South) Diversion) Order, 1958. (S.I. 1958 No. 2064.) 5d.
London Traffic (Prescribed Routes) (Hampstead) Regulations, 1958. (S.I. 1958 No. 2065.) 4d.
Matrimonial Causes (Amendment) Rules, 1958. (S.I. 1958 No. 2082 (L.14).) 8d.
See *ante*, p. 923.
Matrimonial Causes (Property and Maintenance) Act (Commencement) Order, 1958. (S.I. 1958 No. 2080 (C.15).) 4d.

This order prescribes 1st January, 1959, as the date for the coming into operation of the Matrimonial Causes (Property and Maintenance) Act, 1958 (cf. p. 923, *ante*).

Matrimonial Proceedings (Children) Act (Commencement) Order, 1958. (S.I. 1958 No. 2081 (C.16).) 4d.

This order prescribes 1st January, 1959, as the date for the coming into force of Pt. I of the Matrimonial Proceedings (Children) Act, 1958 (cf. p. 923, *ante*).

Opencast Coal (Authorisations and Compulsory Rights Orders) Regulations, 1958. (S.I. 1958 No. 2055.) 10d.
Stopping up of Highways (London) (No. 51) Order, 1958. (S.I. 1958 No. 2051.) 5d.
Stopping up of Highways (London) (No. 52) Order, 1958. (S.I. 1958 No. 2052.) 5d.
Stopping up of Highways (County of Northumberland) (No. 3) Order, 1958. (S.I. 1958 No. 2053.) 5d.
Stopping up of Highways (County of Stafford) (No. 18) Order, 1958. (S.I. 1958 No. 2041.) 5d.
Stopping up of Highways (County of York, North Riding) (No. 6) Order, 1958. (S.I. 1958 No. 2054.) 5d.
Superannuation (Transfers between the Civil Service and Public Boards) (Amendment) Rules, 1958. (S.I. 1958 No. 2092.) 5d.
Tribunals and Inquiries Act, 1958 (Commencement) Order, 1958. (S.I. 1958 No. 2079 (C.14).) 4d.

This order prescribes 1st January, 1959, as the appointed day for the purposes of s. 3 of the Tribunals and Inquiries Act, 1958, and of the entries in Pt. II of Sched. II to the Act relating to the National Service Act, 1948.

NOTES AND NEWS

Miscellaneous

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in previous volumes and at pp. 514 and 921, *ante* :—

Draft Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Cardiganshire County Council	Lampeter Municipal Borough; Aberaeron and New Quay Urban Districts; Aberaeron Rural District: modification to draft map and statement of 17th October, 1955	26th August, 1958	11th October, 1958
Devon County Council	South Molton Borough; South Molton Rural District	9th September, 1958	17th January, 1959
	Torquay Borough: modification to draft map and statement of 19th July, 1957	10th September, 1958	17th October, 1958
Dorset County Council	Weymouth Borough; Beaminster and Dorchester Rural Districts: further modification to draft map and statement of 30th August, 1957	24th October, 1958	24th November, 1958
	Wareham Borough; Swanage Urban District; Wareham and Purbeck Rural District: modification to draft map and statement of 1st July, 1955	10th October, 1958	7th November, 1958
Kent County Council	Area of council: further modifications to draft map and statement of 8th May, 1958	16th October, 1958	22nd November, 1958
Norfolk County Council	Cromer Urban District: modification to draft map and statement of 28th June, 1955	17th October, 1958	14th November, 1958
	Freebridge Lynn Rural District: modification to draft map and statement of 21st January, 1957	17th October, 1958	14th November, 1958
North Riding of Yorkshire County Council	Various parishes in the area of the council: further modifications to draft map and statement of 28th June, 1957, and 21st March, 1958	14th November, 1958	16th December, 1958

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Northumberland County Council	Alnwick, Bellingham, Haltwhistle and Rothbury Rural Districts: modification to draft map and statement of 29th January, 1958	16th October, 1958	21st November, 1958
	Morpeth Rural District: further modifications to draft map and statement of 15th August, 1956	16th October, 1958	21st November, 1958
Warwickshire County Council	Alcester Rural District; Royal Leamington Spa and Warwick Boroughs: modification to draft map and statement of 1st March, 1954	21st November, 1958	22nd December, 1958
	Southam Rural District: modification to draft map and statement of 1st March, 1954	5th September, 1958	6th October, 1958

Provisional Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to Quarter Sessions
East Suffolk County Council	Aldeburgh Borough; Felixstowe, Halesworth, Leiston, Saxmundham, Stowmarket and Woodbridge Urban Districts; Blyth, Deben and Gipping Rural Districts	5th September, 1958	3rd October, 1958
Warwickshire County Council	Nuneaton and Sutton Coldfield Boroughs	28th November, 1958	25th December, 1958

Definitive Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to High Court
Anglesey County Council	Area of council	10th October, 1958	22nd November, 1958
Devon County Council	Dartmouth Borough; Kingsbridge and Salcombe Urban Districts; Kingsbridge Rural District	25th November, 1958	7th January, 1959
Northampton County Council	Daventry and Northampton Rural Districts	3rd October, 1958	15th November, 1958

Revision of Draft Map and Statement

Surveying Authority	Date of notice	Last date for receipt of representations or objections
Cambridgeshire County Council	. . 31st October, 1958	8th December, 1958

DEVELOPMENT PLANS

Proposals for Alterations or Additions Submitted to Minister

Title of plan	Districts affected	Date of notice	Last date for objections or representations
County Borough of Burnley	County Borough of Burnley	22nd November, 1958	10th January, 1959
Kent County Council	Christ Church, Sandgate Road, Folkestone; St. Margaret's Bay, Dover Rural District	28th November, 1958	10th January, 1959
Administrative County of London	Greenwich	26th November, 1958	13th January, 1959
	Woolwich	19th November, 1958	30th December, 1958
Middlesex County Council	Brentford and Chiswick Boroughs	24th November, 1958	5th January, 1959
	Edmonton Borough	24th November, 1958	5th January, 1959
Norfolk County Council	Blofield and Flegg, Forehoe and Henstead, and St. Faith's and Aylsham Rural Districts	9th December, 1958	1st February, 1959
County Council of the West Riding of Yorkshire	Meltham and Stockbridge Urban Districts; Penistone and Wortley Rural Districts	28th November, 1958	31st January, 1959

Amendments by Minister

Title of plan	Districts affected	Date of notice	Last date for applications to High Court
City of Plymouth	—	27th November, 1958	6 weeks from 28th November, 1958
County Borough of Wolverhampton	—	21st November, 1958	6 weeks from 25th November, 1958

Approval by Minister

Title of plan	Date of notice	Last date for applications to High Court
Pembrokeshire County Council	4th December, 1958	6 weeks from 4th December, 1958

SOCIETIES

In The Law Society's Intermediate Examination held on 13th and 14th November, 1958, 271 candidates entered and 157 passed.

In the Final Examination held on 3rd, 4th, 5th and 6th November, 1958, 427 candidates entered and 221 passed. The Council have awarded the following prizes: to Philip Beckman, B.A. (Oxon), the John Mackrell Prize, value £15, and to John Anthony Rowson, the Charles Steele City of London Solicitors' Company Prize.

At the annual dinner of the Leeds Law Students' Society, held on Thursday, 11th December, Mr. R. Middleton, president of the Leeds Incorporated Law Society, proposed a toast to the Society and said that men of law never stop learning. He told the students that they faced one of the hardest professional examinations in the country, and if they passed it they would find their peak of legal learning higher than ever before. Mr. J. B. Driffield, secretary, responded. The Recorder of Leeds, Mr. Geoffrey Veale, Q.C., proposed a toast to the president, Mr. Justice Paull, and Mr. A. M. Conway, treasurer, proposed a toast to " The Guests," to which Judge D. O. McKee replied. Other guests included Judge Ernest Ould and Mr. O. A. Radley, a former Town Clerk of Leeds.

OBITUARY

Mr. C. G. BAILEY

Mr. Charles Geoffrey Bailey, solicitor, of Selby, Yorkshire, has died, aged 56. He was admitted in 1926, and was a past president of the Yorkshire Law Society and a member of the Law Advisory Committee of Leeds University. He held the silver medal of the Royal Life Saving Society and was president of the Yorkshire Amateur Swimming Association from 1939 to 1945 and president of the North Eastern Counties Swimming Association in 1946.

Mr. A. F. GREENHALGH

Mr. Adam Fletcher Greenhalgh, solicitor, of Bolton, died on 5th December, aged 85. He was admitted in 1896.

Mr. V. THOMPSON

Mr. Vincent Thompson, O.B.E., solicitor and Alderman of the City of Exeter, died on 19th December, aged 88. He was admitted in 1896.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).